

Federal Communications Commission

DA 03-192

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Apopka, Maitland, and Homosassa Springs,
Florida)

(Othello and Basin City, Washington)

(Shawnee and Topeka, Kansas)

MB Docket No. 03-24
RM-10636

MB Docket No. 03-25 ✓
RM-10637

MB Docket No. 03-26
RM-10638

NOTICE OF PROPOSED RULE MAKING

Adopted: January 29, 2003**Released January 31, 2002****Comment Date: March 24, 2003****Reply Date: April 5, 2003**

By the Assistant Chief, Audio Division:

1. Before the Commission for consideration is a multiple docket *Notice of Proposed Rule Making* setting forth three separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each proposal seeks to change the community of license for an existing channel, pursuant to Section 1.420(i) of the Commission's rules. In each instance, the petitioner states that the proposal comports with the requirement that the proposed channel must be mutually exclusive with the existing channel, and the new community must be preferred over the existing community under the commission's allotment priorities.¹ Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket *Notice of Proposed Rule Making* issued in accordance with the Commission's *Public Notice* released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single *Notice of Proposed Rulemaking*. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the *Public Notice*, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

¹ See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

A. MB Docket No. 03-24; RM-10636**Petitioner:** Cox Radio, Inc

Kevin F. Reed
 Elizabeth A. M. McFadden
 Nam E. Kim
 Dow, Lohnes & Albertson, PLLC
 Counsel for Petitioner
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 Washington, D.C. 20036

Proposal: Change the community of allotment and upgrade the license for Channel 237A at Apopka, Florida, to Channel 237C3 at Maitland, Florida, and modify the license of WPYO(FM) accordingly. In order to facilitate those changes, petitioner further proposes to relocate the transmitter site of WXCW(FM), Homosassa Springs, Florida, and to modify the license for WXCW(FM).

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Apopka, FL	237A	---
Maitland, FL	---	237C3
Homosassa Springs, FL	237A	237A ²

Coordinates: 28-37-39 NL and 81-13-02 WL

Additional Information: Channel 237C3 can be allotted to Maitland with a site restriction of 14.7 km (9.2 miles) east of Maitland at the reference coordinates indicated above.

The proposed change of community would provide Maitland with a first local aural service, whereas the current allotment provides Apopka with a second local full-time aural service. Apopka would continue to be served by a full-time AM station, WHIM-AM. The proposal would result in a gain of 3,007.1 square kilometers with a population of 233,638 persons, and would produce a loss area of 718.8 square kilometers with a population of 64,224 persons, for a net gain of 2,288.3 square kilometers and 169,414 persons.

Both Apopka and Maitland are located entirely within the Orlando, Florida, Urbanized Area. Currently, the WPYO(FM) signal reaches 46.8 percent of the Orlando Urbanized Area, and a grant of the proposal would allow WPYO(FM) to reach 60.6 percent of the Urbanized Area. Petitioner contends that the proposal does not require a *Tuck* analysis³ because it is relocating from one community in the Urbanized Area to another community also located within the Urbanized Area.⁴ Nonetheless, the petition contains a *Tuck* analysis purporting to establish that Maitland is independent of the Orlando Urbanized Area.

² Change in authorized transmitter site.

³ *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁴ *Long Beach and East Los Angeles, California*, 10 FCC Rcd 2864 (M.M. Bur. 1995)

Petitioner states that Maitland is a city with a population of 12,019 persons. Petitioner further states that Maitland has its own mayor, city council, city manager, and numerous municipal service departments, including: police, public works, fire/rescue and building, finance, cultural services, parks and recreation, and community development. Petitioner also states that Maitland has its own zip code, post office, private and public schools, hospital and health clinics, public library, civic center, chamber of commerce, historical society, arts center, and numerous local businesses, churches, sports leagues, and clubs.

FCC Contact: Deborah A. Dupont (202) 418-7072

B. MB Docket No. 03-25; RM-10637:

Petitioner: Wheeler Broadcasting, Inc.

Barry A. Friedman, Counsel
Thompson Hine LLP
1920 N Street, N.W., Suite 800
Washington, D.C. 20036-1600

Proposal: Change the community of allotment and upgrade the license for Channel 248C3 at Othello, Washington, to Channel 248C2 at Basin City, Washington, and modify the license of KZLN(FM) accordingly.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Othello, Washington	248C3	--
Basin City, Washington	---	248C2

Coordinates: 46-39-26 NL and 119-10-23 WL

Additional Information: Channel 248C2 can be allotted to Basin City with a site restriction of 7.2 km (4.5 miles) north of Basin City at the reference coordinates indicated above.

The proposed change of community would provide Basin City with a first local aural service, whereas the current allotment provides Othello with a second local full-time aural service. If the proposal is adopted, Othello would continue to be served by a full-time AM station, KRSC-AM. The proposal would result in a gain of 3,788 square kilometers with a population of 150,659 persons, and would produce a loss area of 40 square kilometers with a population of zero, for a net gain of 3,748 square kilometers and 150,659 persons.

Neither the existing Channel 248C3 facility at Othello, nor the proposed Channel 248C2 facility at Basin City, cover any part of any urbanized area within the 70dBu contour. Accordingly, a *Tuck* analysis is not required.

Petitioner states that Basin City is a Census-designated place with a 2000 Census population of 968

persons. Petitioner also states that Basin City has its own airfield, volunteer fire department, elementary school, public library, and health service facility. Petitioner further states that many churches, restaurants, grocery stores, and other businesses are located in Basin City.

FCC Contact: Deborah A. Dupont (202) 418-7072.

C. MB Docket No. 03-26; RM-10638:

Petitioner: Cumulus Licensing Corporation

Mark N. Lipp, Counsel
J. Thomas Nolan, Counsel
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Washington, D.C. 20005-2004

Proposal: Change the community of allotment and downgrade the license for Channel 299C at Topeka, Kansas, to Channel 299C1 at Shawnee, Kansas, and modify the license of KMAJ(FM) accordingly.

Community	Present	Proposed
Topeka, Kansas	233C0, 257C3, 262C, 295C, 299C	233C0, 257C3, 262C, 295C
Shawnee, Kansas	—	299C1

Coordinates: 39-09-06 NL and 95-09-28 WL

Additional Information: Channel 299C1 can be allotted to Shawnee with a site restriction of 41.3 km (25.6 miles) west of Shawnee at the reference coordinates indicated above.

The proposed change of community would provide Shawnee with a first local aural service, whereas the current allotment provides Topeka with a fifth local FM service.

There are a few small sections of the loss area that will be left with fewer than five full-time reception services once Station KMAJ(FM) is reallocated to Shawnee. The area that would be left with only four services contains 494 persons and covers 205 square kilometers. The remainder of the loss area will be completely covered by at least five other full-time services. There are a few small sections of the gain area that are presently receiving fewer than five full-time services. The area currently receiving only three full-time services contains 481 people and covers 43 square kilometers, and the area receiving only four full-time services contains 4,610 persons and covers 108 square kilometers. The remainder of the gain area is completely covered by at least five other full-time services.

The proposal would result in a gain of 8,496 square kilometers with a population of 1,542,029 persons, and would produce a loss area of 10,953 square kilometers with a population of 134,899, for a net **loss** of 2,457 square kilometers and a net gain of 1,407,130 persons.

The existing Channel 299C facility at Topeka covers 100 percent of the Topeka, Kansas Urbanized Area and 12.1 percent of the Lawrence, Kansas Urbanized Area with the 70dBu contour. The proposed Channel 299C1 facility at Shawnee would cover 100 percent of the Lawrence, Kansas Urbanized Area, 73.5 percent of the Topeka, Kansas, Urbanized Area, and 43.8 percent of the Kansas City, Missouri/Kansas Urbanized Area with the 70 dBu contour. Petitioner contends that a *Tuck* analysis is not required because the proposal would move the station from one urbanized area to another.⁵ The petitioner nonetheless supplies a *Tuck* analysis to demonstrate that Shawnee deserves a first local service preference.

Petitioner states that Shawnee is a city with a 2000 Census population of 47,996 persons. Petitioner also states that Shawnee has its own local government and elected officials, including a mayor, city council, city manager, police and fire departments, municipal court division, and numerous city and municipal governmental departments. Petitioner further states that Shawnee has approximately 1,341 businesses, numerous health care providers and religious and civic organizations, and a local weekly newspaper.

FCC Contact: Deborah A. Dupont (202) 418-7072

3. Comments, reply comments, counterproposals and other pleadings filed in response to this *Notice of Proposed Rule Making* should reference the docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before **March 24, 2003**, and reply comments on or before **April 8, 2003**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554. Additionally, due to the interrelated nature of these three proceedings, we shall require parties in any of the proceedings to serve parties in the other two proceedings. Initially, copies of all filings in any of the three proceedings should be served on Linda Crawford and Maurice Salsa, at their respective addresses.

5. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. All envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail)

⁵ See e.g. *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (M.M. Bur. 1996)

must be sent to **9300** East Hampton Drive, Capitol Heights, MD **20743**. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to **445 12th** Street, S.W., Washington, D.C. **20554**. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of **1980** do not apply to a rule making proceeding to amend the FM Table of Allotments, Section **73.202(b)** of the Commission's Rules.⁶

7. For further information concerning this proceeding, contact Deborah A. Dupont, Media Bureau, at **(202) 418-7072**. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁶ See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 Fed. Reg. 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (h) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.